S.B. CIVIL MISC. APPEAL NO.280/2007.
(Guddi Kanwar & Ors. Vs. Bajrang Lal & Ors.)

Date of Order :: 19th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manish Pitliya, for the appellants.

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This is claimants' appeal seeking enhancement over the amount of Rs.4,64,000/- awarded by the Tribunal towards compensation on account of accidental death of Mohabbat Singh, about 28 years in age and said to be earning as a truck driver.

For assessment of pecuniary loss for the claimants, wife and mother of the victim, the Tribunal has noticed the assertion of the claimants about the deceased earning Rs.4,000/- per month from driver's job and Rs.3,000/- per month from agriculture; has found that there was no proof about the agricultural income and has referred to the admission of the wife of deceased about joint cultivation in the name of her father-in-law by her husband and his brother; has referred to the driving licence of the deceased (Ex.16) and has found that the deceased was working as driver for about four years; and in the overall circumstances has put an estimate on his income at Rs.3,000/- per month and after deducting one-third wherefrom has taken annual loss of contribution at Rs.24,000/- and with application of maximum

side multiplier of 18 has assessed pecuniary loss at Rs.4,32,000/-. The Tribunal has proceeded to allow Rs. 10,000/- each to the wife and mother towards loss of love and services of the deceased and further Rs. 10,000/- to the wife towards loss of consortium and Rs.2,000/- towards funeral expenses and, in this manner, has assessed total loss for the claimants at Rs.4,64,000/-.

Mr.Manish Pitaliya, learned counsel for the appellants seeking enhancement over the amount so awarded by the Tribunal has strenuously contended that the Tribunal has been in error in : (i) not taking monthly income of the deceased as a heavy vehicle driver minimum at Rs.3,500/- per month as established by the salary certificate produced on record and in not considering that this much of the income was even put in suggestion on behalf of the insurer in cross-examination of the claimant; (ii) not providing for enhancement towards future prospects particularly when the deceased was in a young age of 28 years. Learned counsel has referred to an order passed by this Court on 16.10.2006 in S.B. Civil Misc. Appeal No.1585/2006 : The New India Assurance Company Limited Vs. Smt. Shanti Devi & Ors., and has urged that an award of Rs.6,93,000/- made by the Tribunal in favour of the dependents of about 30 years old heavy vehicle driver has been affirmed by this Court; and sought parity for the present

appellants and submitted that award of compensation more than rupees six lacs ought to have been made in this case. The submissions are not well founded.

So far the income of the deceased is concerned, the Tribunal has noticed that a salary certificate was of course placed on record but was not got exhibited in evidence by either of the parties. It appears that in view of the said certificate, though not proved, the insurer in its cross-examination put a question to the wife of the deceased that the income of the deceased was not more than Rs.3,500/- per month. For its contents and context, such suggestive question cannot be taken to be an admission on the part of the non-applicants of the income of the deceased at Rs.3,500/- per month; and merely for such suggestion, the Tribunal could not have estimated the income of the deceased. The estimate on the monthly income of the deceased as put by the Tribunal at Rs.3,000/- per month, even if moderate, cannot be said to be grossly inadequate.

Claim for enhancement towards future prospects does not fit in the fact situation of the case where the deceased was not in any settled job or employment and there is nothing on record to consider existence of the element of enhancement so as to form a reasonable component of loss for the claimants.

Moreover, in the present case, the Tribunal has assessed pecuniary loss after deducting one-third on personal expenditure of the deceased with application of maximum side multiplier of 18. In the overall circumstances of the case with lesser number of dependents, assessment so made by the Tribunal cannot by any standard be said to be low or insufficient. The Tribunal has further awarded reasonably higher amount towards non-pecuniary loss. In the ultimate analysis, the award as made by the Tribunal in this case rules out any scope for enhancement.

The submission as made by the learned counsel with reference to an order passed by this Court while dismissing in limine an appeal by the insurer of the vehicle involved in accident, the aforesaid CMA No.1585/2006, remains rather misplaced. It appears that merely for the deceased in the said case being a truck driver in the age group of 25-30 years and the award of compensation as made in the said case in the sum of Rs.6,93,000/- having not been interfered with in insurer's appeal by this Court, the contention has been put forth that such amount of over Rs.6,00,000/- ought to be the compensation in the present case too.

It is to be imbibed that the process of quantification of compensation in a vehicular accident claim case is dependent upon variety of facts and factors,

ponderables and imponderables; and even a slight difference in the fact situation could bring about altogether different configuration. In such process of quantification of compensation, arithmetic is only a tool and not the master. The submission as made by the learned counsel only with reference to the figure of compensation losses sight of various significant distinguishing features. In the said case of New India Assurance Co. Vs. Smt. Shanti Devi, the Tribunal provided for a component of future enhancement of income of the deceased, 30 years old truck driver, after estimating his income at Rs.3,000/- per month; and after deducting one-third, applied a multiplier of 18 to assess pecuniary loss at Rs.6,48,000/-. The said was an appeal submitted by the insurer of the vehicle involved in accident and it was contended that enhancement in the name of future prospects was not justified. This court commented on the estimate on the income of truck driver merely at Rs.3,000/- that the Tribunal could have estimated it higher too. Then it was noticed that the dependents of the deceased were his wife in 28 years, three children respectively in 6, 4 and 2 years and mother in 48 years of age. This court observed that in view of the responsibilities of the deceased and with a comparatively larger family of seven persons to maintain, unit method of assessment of loss of contribution could have provided and

personal expenditure of the deceased could have been at 25% and not 33%. In that view of the matter, this Court was satisfied that even if no component of future prospects was provided because of the deceased being in a private job with no certainty of increment, yet the assessment of loss of contribution at Rs.36,000/- per annum was not excessive. In the ultimate analysis, it was found that the award in the sum of Rs.6,93,000/- could not be said to be highly excessive and did not require interference at the instance of the appellant-insurer. The fact situation of the present case shows that only the wife was the person exclusively dependent on the deceased; and the father (since deceased) in 60 years and mother in 58 years of age were even otherwise not solely dependent on the deceased. Looking to the nature and extent of dependency and surrounding circumstances, this Court is satisfied that in the ultimate analysis, the multiplicand as taken in the present case at Rs.24,000/- per annum cannot be said to be grossly inadequate or insufficient and, as noticed, non-pecuniary loss has been allowed rather on the higher side. The present case cannot be put at comparison with the case sought to be relied upon.

It may also be pointed out that in the awards of compensation, ordinarily, interference in appeal is considered when in the given fact situation of the case the award of

compensation appears to be either grossly inadequate (in an appeal by the claimant/s) or highly excessive (in an appeal by the person/s responsible to make payment). Non-interference in an appeal of the insurer seeking to question the quantum of compensation after finding that the award made is not highly excessive cannot be a precedent for the claimants to suggest that the amount affirmed therein is always required to be granted when the victim is of the same age group and of the same job. However, it may also be pointed out that in the said decision too this court has not countenanced as such addition in the name of future prospects for a person in private job with no certainty of increments and, instead, observed,-

> "In the aforesaid view of the matter, this Court is satisfied that even if no component of future prospects is provided because of the deceased being only in a private job with no certainty of increment yet the assessment of loss of contribution at Rs.36,000/- per annum does not appear excessive."

The present appeal remains wholly bereft of substance and is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

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